

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:)	
)	
KVMD Licensee Co., LLC)	CSR-6989-M
v.)	
Comcast Cable Communications, Inc.)	
)	
Request for Carriage)	

MEMORANDUM OPINION AND ORDER

Adopted: June 29, 2006

Released: July 3, 2006

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. KVMD Licensee Co., LLC, permittee of station KVMD-DT, Twentynine Palms, California (“KVMD”), filed the above-captioned complaint against Comcast Cable Communications, Inc. (“Comcast”), for its failure to carry KVMD on certain cable systems in the Los Angeles DMA.¹ No opposition to this petition has been received. For the reasons discussed below, we dismiss KVMD’s request.

II. DISCUSSION

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues (“Must Carry Order”)*, commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station’s market.² A

¹Comcast serves the communities of Artesia, Athens, Baldwin Hills, Bell Gardens, Bellflower, California Oaks, Canyon Lake, Carson, Castaic Lake, Claremont, Compton, Corona, Costa Mesa, Covina, Cudahy, Culver City, Cypress, Downey, East Compton, El Cerrito, Florence, Glenn Ivy, Harbor City, Hawaiian Gardens, Hawthorne, Hollywood, Homeland, Horse Thief Canyon, Inglewood, Kagel Canyon, La Miranda, La Palma, Ladera Heights, Lake Elsinore, Lakewood, Lennox, Lomita, Los Angeles, Lynwood, Maywood, Menifee, Murrieta, Murrieta Hot Springs, Newhall, Nuevo, Paramount, Playa del Rey, Pomona, Quail Valley, Riverside, Romoland, San Pedro, Santa Clarita, Santa Fe Springs, Saugus, Sedco Hills, South Central Los Angeles, South El Monte, Sunland, Sylmar, The Farm (MBH), Tujunga, Tustin, Valencia, West Los Angeles, Westchester, Wild Rose, Wildomar, Willowbrook, Wilmington, Wilshire, and Windsor Hills, California.

²8 FCC Rcd 2965, 2976-2977 (1993).

station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.³

3. KVMD has been the subject of several must carry disputes and market modification decisions involving cable operators in the Los Angeles DMA, including Comcast's systems herein.⁴ KVMD's request for mandatory carriage in the communities served by Comcast were dismissed as Comcast was under no legal obligation to carry the station's signal.⁵ KVMD filed a petition for partial reconsideration of the *Comcast Order* requesting that the Bureau overturn that portion of the decision which exclude KVMD from carriage. This petition remains pending.

4. KVMD states that it filed the instant complaint in order to assert and preserve its 2006-2008 must carry rights during the pendency of the above-described partial reconsideration proceeding.⁶ KVMD also requests that, upon reversal of the *Comcast Order*, the Commission require Comcast to carry the digital broadcast signal of KVMD-DT. We will dismiss KVMD's complaint. While the Commission has not yet acted on the pending petition for partial reconsideration, the Bureau's market modification decision remains in full force and effect. Thus, KVMD is not a local station entitled to mandatory carriage on Comcast's cable systems from which it was excluded in the *Comcast Order*.⁷

³Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. *See* 47 U.S.C. § 534(h)(1)(C). Section 76.55(e) of the Commission's rules requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. *See* 47 C.F.R. § 76.55(e).

⁴*See Comcast Cable Communications, Inc.*, 19 FCC Rcd 5245 (2003) ("*Comcast Order*"); *recon. pending.*

⁵*Id.*

⁶KVMD is an authorized full-service digital UHF station. Its DTV facility is authorized to broadcast on Channel 23 and commenced operations, pursuant to special temporary authority, on July 29, 2002. On June 1, 2003, it discontinued analog operations and commenced digital-only operations, pursuant to Commission authorization.

⁷In two recent cases, namely, *KVMD Licensee Co., LLC v. CoxCom, Inc. d/b/a Cox Communications Palos Verdes and Cox Communications Orange County*, DA 06-1086 (rel. May 30, 2006), and *KVMD Licensee Co., LLC v. Time Warner Cable*, DA 06-1081 (rel. May 30, 2006), similar must carry complaints from stations were granted. In these cases, as in this proceeding, stations filed must carry complaints, in an abundance of caution, to protect their carriage rights pending the outcome of appeal proceedings. We held that, although the stations did not currently have status to assert must carry rights because of market modification decisions, the stations had the right to file complaints to preserve their right to assert mandatory carriage contingent on the results of their appeals. While we addressed and granted the relief sought in these cases, we now believe that we should no longer entertain such requests. In doing so, we will conserve Commission resources and relieve stations from filing unnecessary petitions. Instead, we recognize that a station has a right to assert must carry status following the successful appeal of a market modification case. The fact that such station did not elect must carry or lodge a complaint following a denial of carriage while the market modification appeal was pending shall not preclude the assertion of carriage rights at that time.

III. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED** that the petition filed by KVMD Licensee Co., LLC **IS DISMISSED** pursuant to Section 614(d)(3) of the Communications Act of 1934, as amended, 47 U.S.C. § 534.

6. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.⁸

FEDERAL COMMUNICATIONS COMMISSION

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⁸47 C.F.R. § 0.283.